IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 147 OF 2005

Ms. Pamela P. Braganza . .. Petitioner.

vs.

Mr. Finlay Braganza. .. Respondent.

Mr. Mr. A.K. Abhyankar with
P. S. Dani for Petitioner.
Mr. R.V. Bansode for respondent no. 1.
Mr. C.S. Balsara with H.N. Vakil i/by
M/s. Mulla & Mulla & C.B.C.
for respondent no. 2.
Mr. C.R. Sonawane, AGP., for R. Nos.3 to 5.

CORAM : S.U. KAMDAR, J.

DATE : 9th December, 2005.

ORAL ORDER :

. The present writ petition was on Board before me on 28.11.2005 and 29.11.2005 when the matter was heard at length. After hearing the matter at length it was proposed that the matter can be settled and draft consent terms were prepared. However, on 30.11.2005 when the matter was called out, the respondent no. 1 has changed the advocate

and now the advocate seeks to reargue the matter. In view of the fact that the matter was fully heard, I have declined to give him permission to reargue the matter. It is because merely by change of advocates the party cannot have a fresh round of arguments in the matter. It is also because it is not desirable to encourage such a kind of practice by which after the hearing of the matter the lawyers are changed for the purpose of arguments. In view thereof, I proceed with the passing of the order as under.

2. The facts in the present case are not in dispute and for the purpose of the present writ petition they are briefly enumerated as under :-

3. A partnership firm, namely, M/s. Rustom Wines is holder of FL-II licence issued under the Bombay Prohibition Act, 1949. The said firm was a partnership firm and had two partners one Mr. Peter Braganza and the daughter Pamela Peter Braganza. Both the partners,namely Peter Braganza had 60% share and Pamela Braganza had 40% share in the said partnership. However, the liquor licence issued by the authority under the Bombay Prohibition Act was not in the name of the partners but in the name of the partnership firm. There is also no dispute that the said Peter Braganza expired on 9.5.2002. The said Peter Braganza on his death left behind a will

dated 29.4.2002 under which he bequeathed his share in the partnership of 60% by conferring the same in such a manner that on his death the second respondent would have 40% share. The petitioner will have 30% share and the respondent no. 1 will have 30% share in the said partnership firm. After the death of Peter Braganza the said respondent no. 1 applied to the authorities for inclusion of his name in the said liquor licence. He has contended before the authority that he has the share in the said licence and, therefore, the licence must be rectified. On the said application, the authority i.e. the Collector at the first instance passed an order on 17.7.2003 that till and until the disputes are resolved by an appropriate Court of competent jurisdiction the said licence to remain suspended against which an appeal was preferred before the Commissioner of State Excise and in the appeal by an order dated 28.7.2003 the said appeal was allowed inter alia holding that the Collector could not have suspended the licence but parties must resolve their dispute in a court of competent jurisdiction and a legal heir is not entitled to stop the business of the firm M/s. Rustom Wines. However, the respondent no. 1 thereafter preferred a revision before the Minister and the Minister by a revisional order once again suspended the licence and set aside the order of the appellate court and the order of the Collector suspending the licence has been

confirmed.

2. It is this order passed in revision which is the subject matter of challenge in the present writ petition.

3. In my opinion, admittedly there were two partners of M/s. Rustom Wines. On the death of said Mr. Peter Braganza on 9.5.2002 the partnership firm has stood dissolved and the firm of M/s. Rustom Wines became the sole proprietary concern by the sole surviving partner Ms. Pamela Peter Braganza. It is now well settled that partnership is an agreement between the parties to carry on business jointly and no party can impose on another party a partner to run a business. The contention which has been advanced before me by the respondent no. 1 that the respondent no. 1 is entitled to be a partner in the partnership firm of M/s. Rustom Wines on the basis of the Will which has been executed in favour of the petitioner, cannot be accepted because the partner cannot devolve a partnership in a firm on the basis of a will. What can be devolved by the deceased partner by the will is his share in the partnership firm. Thus, unless the surviving partner or partners agree to accept the legal heirs to whom the share has been bequeathed either on testate or intestate succession of the deceased partner as a partner in the firm or

the partnership agreement during the life time of the deceased partner provides that on his death his particular legal heir will be added as a partner in the partnership firm, a person merely succeeding to the estate of the deceased cannot force the other partner to be joined in a partnership firm. A deceased's legal heir is entitled to his share by claiming dissolution of his share as on the date of the death of the partner and entitled to his right, title and interest in the said partnership firm by claiming the amount and seeking accounts of the said firm. However, the learned counsel appearing for respondent no. 1 has contended that he should be made a partner in the partnership firm of M/s. Rustom Wines and thus his name should be added in the liquor licence which has been issued to the firm under the provisions of the Bombay Prohibition Act, 1949. In my opinion, no such order can be passed. The Collector's order suspending the licence merely because one of the legal heirs of the deceased partner has raised dispute pertaining to the estate of the deceased is per se not valid and the same is perverse. The order passed by the Revisional Authority upholding the order of the Collector is also bad in law. In my opinion, the remedy of the respondent no. 1 is not to move the authority for suspension of the licence but it is open to him to adopt appropriate proceedings before the competent court demanding his share by virtue of the will in

the said partnership firm. In my opinion, it is not permissible to suspend the business of any person merely on the issue that some person is entitled to the estate of the said deceased unless a suit for dissolution of accounts and claiming the interest and share in the estate of the deceased is filed and appropriate order is passed by the Court of competent jurisdiction. Thus, in my opinion, the order under challenge is unsustainable in law and is required to be quashed and set aside. However, I direct the parties to maintain status quo for a period of four weeks from today so as to enable the respondent no. 1, if he so desires, to adopt any legal proceedings in the matter as he may be advised. The petition disposed of accordingly. However, there shall be no order as to costs.